

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>ALBERT A. CORIOU</b>	:	DETERMINATION
	:	DTA NO. 818875
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law and New York City Personal Income Tax under Chapter 17, Title 11 of the Administrative Code of the City of New York for the Year 2000.	:	

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Petitioner, Albert A. Coriou, 94-26 34<sup>th</sup> Road, Jackson Heights, New York 11372, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Chapter 17, Title 11 of the Administrative Code of the City of New York for the year 2000.

Petitioner and the Division of Taxation consented to have the controversy determined on submission without a small claims hearing. The Division of Taxation submitted documents and a letter brief. Petitioner's reply brief was required to be filed by July 12, 2002, which date began the three-month period for the issuance of this determination. Petitioner appeared *pro se*. The Division of Taxation appeared by Barbara G. Billet, Esq. (Andrew S. Haber, Esq., of counsel).

After reviewing the documents and brief, Arthur Johnson, Presiding Officer, renders the following determination.

***ISSUE***

Whether the Division of Taxation properly denied the refund claimed on petitioner's 2000 amended New York State and City income tax return.

***FINDINGS OF FACT***

1. Petitioner, Albert A. Coriou, filed a timely New York State and City resident income tax return for the year 2000. The return reported New York adjusted gross income of \$33,250.00 and a combined New York State and City tax liability of \$1,604.00. Petitioner had claimed a New York State household credit of \$75.00 and a New York City household credit of \$30.00 when computing his liability. Petitioner prepaid estimated tax of \$982.24 and claimed a City school tax credit of \$62.50 against the liability. He paid the balance due of \$550.26 with the return.

2. On July 29, 2001, the Division of Taxation ("Division") issued a Notice and Demand to petitioner asserting tax due of \$125.50, plus penalty and interest. The notice indicated that the Division disallowed the claimed State and City household credit because of the amount of his reported income. The Division also adjusted the New York City school tax credit from \$62.00 to \$45.00 because petitioner was not 65 years old. Petitioner also used the wrong tax table or the wrong column or line of the tax table when determining his New York State tax.

On July 27, 2001, petitioner paid the sum of \$125.99 including the tax, penalty and interest assessed on the notice.

3. On July 30, 2001, the Internal Revenue Service ("IRS") notified petitioner that it changed his Federal tax return for 2000 by correcting estimated tax payments. The IRS also reduced petitioner's tax from Schedule D. As a result of the changes, petitioner was due a refund of \$1,063.96. The IRS did not adjust petitioner's filing status, adjusted gross income, exemptions or deductions.

4. By letter dated September 26, 2001, petitioner requested a New York State tax refund of \$600.00 based on the overpayment of Federal taxes determined by the IRS. The Division acknowledged receipt of petitioner's request for refund on October 15, 2001. On November 20, 2001, petitioner wrote to Governor Pataki complaining that he did not get an expeditious response to his refund request. On December 4, 2001, Terrence S. Atwater, Director of the Personal Tax Processing Bureau, responded to petitioner. The letter explained that the household credits were disallowed because his income exceeded the maximum for allowing such credits. Petitioner was allowed an additional \$17.50 for the portion of the New York City school tax credit that had been previously disallowed. Since petitioner had paid the tax assessed on the notice and demand, Mr. Atwater indicated that the additional credit allowed resulted in an overpayment which would be refunded plus applicable interest. Petitioner was also provided with a 2000 IT-201-X, Amended Resident Income Tax Return, if he wished to make any further changes to his original return.

5. On December 8, 2001, petitioner filed the IT-201-X for the 2000 tax year on which he claimed a refund of \$443.97. The Division reviewed the amended return and found several errors. Petitioner reported New York adjustments of \$11,500.00 that were not on the original return and did not claim the standard deduction of \$10,500.00. He also claimed estimated tax payments of \$1,044.74 rather than \$982.24 claimed on the original return. Other errors discovered included the amount he claimed as paid with the original return, plus additional tax paid after the return was filed. The amended return claimed \$1,108.23 in payments when the actual amount he paid was \$685.25. Petitioner again used an incorrect tax figure from the tax table for his taxable income. On December 18, 2001, petitioner was advised by letter from Mr.

Atwater that his amended return was recomputed and the amount of his overpayment was \$15.46 and that the balance of the refund he claimed on the amended return was denied.

6. On January 9, 2002, petitioner filed a petition for a hearing with the Division of Tax Appeals.

### ***SUMMARY OF THE PARTIES' POSITION***

7. Petitioner argued that the Division failed to give consideration to the changes made by the IRS to his Federal income tax return which resulted in an overpayment and refund. He argued further that the Division disregarded the amended return he filed that incorporated the Federal changes and never challenged the validity of the reported adjustments.

8. The Division maintained that the Federal changes had no effect on petitioner's New York adjusted gross income, taxable income or tax paid to New York and therefore, he is not entitled to any refund from New York on the basis of the Federal changes. The only overpayment for New York purposes was \$15.46 as indicated in Mr. Atwater's letter of December 18, 2001 for the New York City school tax credit. The Division asserted that the amended return filed by petitioner was fraught with errors and the refund he claimed was properly denied.

### ***CONCLUSIONS OF LAW***

A. The Division reviewed petitioner's New York State and City income tax return filed for tax year 2000 for mathematical errors pursuant to Tax Law § 681(b) and New York City Administrative Code § 11-1781(d). The errors discovered by the Division as noted in Finding of Fact "2" resulted in additional tax due of \$125.50. The IRS also reviewed petitioner's 2000 Federal income tax return and found errors that reduced his tax liability resulting in an overpayment and refund due of \$1,063.96. The IRS increased petitioner's estimated tax

payments and used Part IV of Schedule D to compute a lower tax rate on capital gains.

Petitioner then requested a refund from New York State based on the changes made by the IRS.

The Division reviewed petitioner's 2000 income tax return for a second time and properly determined that the Federal adjustments did not change his New York taxable income or tax liability and he was not entitled to any refund from New York State or City based on such Federal changes. The Division notified petitioner that it corrected the New York City school tax credit from \$45.00 to \$62.50.

The Division reviewed the 2000 amended return filed by petitioner and properly denied his refund claim.

B. Tax Law § 689(e) places the burden of proof on petitioner to show that he is entitled to a refund. Petitioner failed to sustain his burden of proof. The arguments presented by petitioner in his brief and reply brief are convoluted, illogical and are not based on fact or law.

C.. The petition of Albert A. Coriou is granted to the extent that he is entitled to a refund of \$15.46 as set forth in Finding of Fact "5". The Division of Taxation is hereby directed to refund said amount, together with any interest that may be due. The petition is in all other respects denied and the refund denial issued December 8, 2001 is sustained.

DATED: Troy, New York  
August 8, 2002

/s/ Arthur Johnson  
PRESIDING OFFICER